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IN THE

Supreme Court of the United States

OCTOBER TERM 1977

No. 77-1637

R. B. ROBINSON, individually and as next of friend of C. K. Robinson, a minor; and in a representative capacity on behalf of all settlors and natural person beneficiaries of trusts,

Petitioner,

VS.

STANLEY T. KUSPER, County Clerk of the County of Cook, et al,

Respondents.

BRIEF OF THE STATE OF ILLINOIS AS AMICUS CURIAE IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

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The State of Illinois, by William J. Scott, Attorney General of Illinois, respectfully submits its brief in support of the Petition for a Writ of Certiorari as *amicus curiae.*

INTEREST OF THE STATE OF ILLINOIS AS AMICUS CURIAE.

On November 3, 1970, the voters of Illinois approved an amendment to the revenue article of the 1870 Illinois Constitution which prohibited "the taxation of personal property by valuation as to individuals." Prior to adoption, Illinois citizens were informed in an official Report by the Illinois General Assembly that the amendment exempted from taxation personal property which is "owned by or held in a fiduciary capacity for the benefit of natural persons," whereas personal property owned by corporations is subject to taxes. Thus, Illinois voters were clearly led to believe that assets held in trust for natural persons would be exempt from taxation. Subsequent to the mailing of this Report to the electorate, the General Assembly adopted Senate Joint Resolution No. 67, which defined the phrase "as to individuals" to mean "a natural person, or two or more natural persons as joint tenants or tenants in common." This Resolution was never mailed to, or considered by, Illinois citizens in voting for the constitutional amendment.

The recent reaffirmance by the Illinois Supreme Court that the Illinois General Assembly did not intend to exempt personal property held in trust for natural persons results from the Court's continued reliance upon Senate Joint Resolution No. 67 as an expression of legislative intention. Despite the official explanation of the amendment given to the electorate, the Court has never considered what Illinois voters understood and intended in adopting the constitutional amendment. This failure undermines the right of Illinois citizens to rely on the official publications of the State of Illinois, communicated to them pursuant to law, in determining the meaning of proposed amendments to the Constitution of Illinois so as to cast an informed vote on proposals presented to them.

ARGUMENT

Article XIV, § 2 of the Illinois Constitution provides that amendments to the constitution may be proposed by the General Assembly, but that such amendments must be approved by the voters of Illinois before becoming effective. An interpretation of a constitutional amendment therefore involves a consideration of both the legislative intention in proposing the amendment, and of the intent and understanding of the voters in adopting the amendment. The Illinois Supreme Court has repeatedly recognized that the "true inquiry" in construing the constitution "concerns the understanding of its provisions by the voters who adopted it." *Paper Supply Co.* v. *City of Chicago*, 57 Ill. 2d 553, 559 (1974).

In interpreting article IX-A of the 1870 Constitution to mean that trustees and other fiduciaries, whether corporate or not, are not exempted from personal property taxation, the Illinois Supreme Court has extensively examined the pertinent legislative materials to determine the legislative intent in proposing the amendment. See *Hanley* v. *Kusper*, 61 Ill. 2d 452 (1975). However, the Court has not seriously considered the intent and understanding of the voters in adopting the amendment. Illinois law requires that,

> The General Assembly in submitting an amendment to the Constitution to the electorate shall prepare a brief explanation of such amendment, a brief argument in favor of the same. . . . The minority of the General Assembly, if they so desire, may also prepare a brief argument against such amendment. (Ill. Rev. Stat., 1975, ch. 7½, § 2.

Pursuant to this statutory direction, the General Assembly prepared such arguments for and against-article IX-A. In the arguments in favor of the proposed amendment, there

is no indication that article IX-A would not apply to personal property held in trusts for the benefit of natural persons. However, the arguments against the proposed amendment, which were corrected with specific reference to this matter, contain the following language:

> That [personal property] which is owned by or held in a fiduciary capacity for the benefit of natural persons is exempted from taxes; that which is owned by corporations, etc., is subject to taxes.

This argument against the proposed amendment was unquestionably as valid a part of the Report required to be prepared by the General Assembly as any other information submitted to the voters. Being incorporated in the Report, it is almost certain that the voters would carefully weigh the statements contained in both the arguments for and against the proposed amendment before deciding whether to adopt it. Had the Illinois Supreme Court analyzed article IX-A primarily from the voters' perspective, it would clearly have been seen that at the time of adoption these voters understood and intended personal property held in a fiduciary capacity for the benefit of natural persons to be exempted from taxes.

Following the adoption and ratification of article IX-A, the Illinois Attorney General issued two opinions interpreting the amendment as exempting property held in trust where the effect of the tax would be on a natural person, as distinguished from a corporation. Likewise, the State's Attorney of Cook County, Illinois, issued an Opinion that, based on the published argument against the proposed amendment, "the clear import of this legislative explanation is that personal property held in a fiduciary capacity for the benefit of natural persons shall not be subject to the personal property tax."

Despite the certain reliance of Illinois voters on the full legislative explanation of article IX-A in the Report, the Illinois Supreme Court stated in the *Hanley* decision that the Court is "not justified in relying upon arguments against a proposed constitutional amendment 'as seen by the minority' to determine its meaning after adoption." The crucial question emerging from the instant case, however, is whether the *people* of the state are justified in considering all of the official explanatory statements of the General Assembly *prior* to the adoption of a proposed amendment. By specifically refusing to give credence to the clear legislative assertion in the arguments against the proposed amendment, the Court's decision sets a disturbing precedent for future voters by effectively directing that they may no longer rely on legislative statements made for the distinct purposes of clarifying a proposed constitutional amendment and enabling them to make an intelligent decision as to its adoption.

Instead of examining voter intent in adopting Article IX-A, the Court has erroneously relied on Senate Joint Resolution No. 67, which was never mailed to the voters, to determine legislative intent. Thus, in *Lake Shore Auto Parts Co.* v. *Korzen,* 49 Ill. 2d 137 (1971), the Court concluded, in the language of the Resolution, that by use of the phrase "as to individuals," the General Assembly intended to abolish ad valorem taxation of personal property owned by "a natural person, or two or more natural persons as joint tenants or tenants in common." On remand, the Court held that since "[t]rustees and other fiduciaries, whether corporate or not, do not own property as natural persons, . . . they were not exempted from taxation by Article IX-A." (54 Ill. 2d 237, 239) Again in *Hanley,* the Court relied in good part on the Resolution in rejecting the claim that personal property held in trust for natural per-

sons is exempt from taxation. In the instant case, the Court simply found the *Hanley* decision dispositive of this issue. In none of these decisions construing article IX-A did the Court address the fact that Senate Joint Resolution No. 67 was not submitted to Illinois voters, and could not have been considered by them in approving the amendment.

In actuality, however, the General Assembly obviously knew that Illinois voters would rely on the legislative statement that property held in trust for natural persons was exempt from taxation when it purposefully corrected a previous statement that trusts were not exempt from personal property taxes. In analagous situations, the Secretary of State is required by law to submit to the Attorney General for approval certain propositions other than constitutional amendments, as well as "such statements or suggestions as may be necessary for a proper understanding of said proposition." (Ill. Rev. Stat., 1975, ch. 7½, § 9). Assuredly, the Attorney General would never knowingly approve material misstatements of fact nor allow misleading suggestions to be submitted to the voters. The Illinois Supreme Court should have attributed to the General Assembly at least as great a concern regarding all of the statements made in connection with a constitutional amendment.

CONCLUSION

For the reasons stated herein, it is the position of the State of Illinois as *Amicus Curiae* that *certiorari* should be granted in the instant case so that the decision of the Illinois Supreme Court may be reviewed.

Respectfully submitted,

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